

COLIN M. THOMPSON, Esq.
2d Floor, J.E. Tenorio Bldg.
PMB 917 Box 10001
Saipan, MP 96950
Telephone: (670) 233-0777
Facsimile: (670) 233-0776

FILED
Clerk
District Court

NOV 02 2005

For The Northern Mariana Islands
By _____
(Deputy Clerk)

Attorney for Defendants
Micronesian Telecommunications Corporation and
Pacific Telecom, Inc.

IN THE UNITED STATES DISTRICT COURT

FOR THE

NORTHERN MARIANA ISLANDS

CV 05 - 0034

**BOARD OF THE MARIANAS PUBLIC LAND
AUTHORITY AND MARIANAS PUBLIC LAND
AUTHORITY, for themselves and on behalf of the
Northern Marianas Descent,**

Plaintiffs,

**MICRONESIAN TELECOMMUNICATIONS
CORPORATION, PACIFIC TELECOM, INC.,
AND DOES 1-5,**

Defendants.

CIVIL ACTION NO. ____ - ____

NOTICE OF REMOVAL

(28 U.S.C. § 1441. *et seq.*)

NOTICE OF REMOVAL

**TO: THE HONORABLE ALEX R. MUNSON, CHIEF JUDGE,
DISTRICT FOR THE NORTHERN MARIANAS ISLANDS**

INTRODUCTION:

Petitioners, Pacific Telecom, Inc., and Micronesian Telecommunications Corporation
("MTC"), are corporate entities, named as defendants in the above-entitled matter. They reserve
their right to assert independent interests as to any issue or matter in this action, including to any

1 issues or matters relating thereto, and without waiving any defenses and objections, joint or separate.

2
3 They state:

4 1. Petitioners hereby assert their right under the provisions of 28 U.S. C. §1441, *et seq.*,
5 to remove this action from the Superior Court of the Commonwealth of the Northern Mariana
6 Islands Saipan, in which said action is now pending under the above-captioned title.

7 2. This is an action in which the federal district court has original jurisdiction upon of
8 the following bases: Plaintiff's cause of action is based upon a claim or right that infringes upon the
9 Constitution, treaties or laws of the United States, 28 U.S.C. §1441(b) (applying 28 U.S.C. § 1331),
10 See, Plaintiffs' Summons, Verified Complaint and Demand for Jury Trial, attached to this Notice of
11 Removal as Appendix "A."
12

13
14 **PLAINTIFFS' CAUSES OF ACTION:**

15 3. Plaintiffs seek termination and ejectment of MTC from MTC's right to sue the rights-
16 of-way/easements given by the CNMI Government, under its telecommunications franchise
17 agreement with MTC, in violation of a MTC's contractual relationship with the CNMI Government
18 to serve as the CNMI local telephone exchange carries.
19

20 4. Plaintiffs seek the remedy of leasehold termination and ejectment of MTC from
21 previously-acquired leases/telecom cable rights-of-way/easements from its various telecom-
22 munications network throughout the CNMI and from the MTC's remote switching stations located
23 at: Susupe, Saipan; As Gonno Saipan; Garapan, Saipan; Kagman, Saipan, Tinian, and, Sinapalu,
24 Rota, the effect of which is granted would cause a CNMI wide cessation of telecom services and a
25 barrier to MTC providing interstate and/or intrastate telecommunications services for the people of
26 the CNMI.
27
28

1 5. MTC is the duly franchised CNMI telecommunications local exchange carrier and
2 subject to the provisions of the Federal Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 59
3 (1996), codified at 47 U.S.C. § 251, *et seq.*, MTC holds various rights-of-way/easements from the
4 CNMI Government for its underground telecommunications cable used to transmit
5 telecommunications data.
6

7 6. Plaintiffs have embarked on a course of conduct, which seeks to impose lease and
8 easement requirements that are discriminatory and not competitively neutral, the effect of which
9 would amount to a regulatory scheme that would prohibit MTC from providing competitively-priced
10 telecommunications services in violation of 47 U.S.C. § 253, a law of the United States. Plaintiffs'
11 actions pursuant to this scheme are unlawful and are pre-empted by federal law.
12

13 7. Plaintiffs' causes of action clearly disclose that they seek unfair and unreasonable
14 compensation from MTC by signing rates which are not competitively neutral and are
15 discriminatory. Such actions violate 47 U.S.C. § 253, a law of the United States. Plaintiffs' actions
16 would ultimately prohibit MTC's ability to provide fair and competitively priced
17 telecommunications services. They also are pre-empted by federal law.
18

19 8. Although Plaintiffs action is allegedly not contrary to the MTC / CNMI Government
20 telecom utility service franchise agreement which allegedly was modified by the CNMI Fiber Optic
21 Communications Facilitation and Competitive Telecommunications Act of 1996, 2 CMC § 1222(b),
22 *et seq.*, under which Act all breaches or default committed by a party of the terms and conditions of
23 a right- of-way given are subject to enforcement by the Secretary of the CNMI Department of Lands
24 and Natural Resources, not by MPLA. Further, to the extent the application of the Act impairs an
25 existing contractual obligation entered into prior to the Act, such would violate the U.S.
26 Constitution, Article I, Section 10.
27
28

1 9. Plaintiffs seek divestment of MTC's right-of-way use under its franchise agreement,
2 purportedly modified by the CNMI Fiber Optic Communications Facilitation and Competitive
3 Telecommunications Act of 1996, 2 CMC § 1222(b), *et seq.*, which in turn is premised upon the
4 jurisdictional authority of the Marine Sovereignty Act of 1980, 2 CMC § 1101, *et seq.*, and the
5 Submerged Lands Act, 2 CMC § 1201, *et seq.*, each of which local laws was declared pre-empted
6 by or in violation of federal law. See. in *CNMI v. United States*, 399 F.3d 1057, 1066-67 (9th Cir.
7 2005). Further, Plaintiffs' assertion of authority over CNMI submerged lands, as defined in 2 CMC
8 § 1213(k), violates the Supremacy Clause of the United States Constitution and gives rise to a claim
9 or right arising under the Constitution, treaties or laws of the United States, which claims or rights
10 MTC may seek declaratory and/or injunctive relief to assert Federal pre-emption. *Bud Antle, Inc. v.*
11 *Barbosa*, 45 F.3d 1261, 1269 (9th Cir. 1994) (even in absence of explicit statutory provision
12 establishing a cause of action, party may ordinarily seek declaratory and/or injunctive relief against
13 state action on the basis of federal pre-emption).

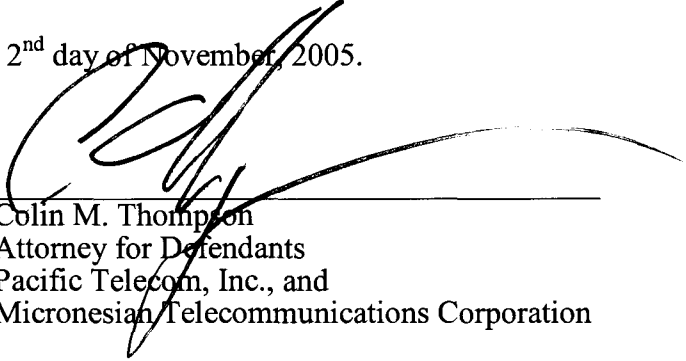
14 10. Plaintiffs seek divestment of MTC's rights under its franchise agreement with the
15 CNMI Government, by asserting that the agreement was modified in accordance with the CNMI's
16 Fiber Optic Communications Facilitation and Competitive Telecommunications Act of 1996, 2 CMC
17 § 1222(b), *et seq.*, but this Act infringes upon and impairs the pre-existing contractual terms in
18 existence between the CNMI Government and MTC, in violation of the U.S. Constitution, and
19 MTC/PTI's rights arising under the Constitution, treaties or laws of the United States.

20 11. Pursuant to 28 U.S.C. §1446, a copy of this Notice of Removal is being filed with the
21 Superior Court of the CNMI, and this Notice of Removal is being served on all adverse parties.

22 12. Petitioners reserve the right to amend or supplement this Notice of Removal.
23
24
25
26
27
28

1 **WHEREFORE**, Petitioners do hereby remove the action now pending against them in the
2
3 Superior Court of the CNMI, Saipan, as Civil Action No. 05-0393C, to this Court.

4
5 RESPECTFULLY SUBMITTED this 2nd day of November, 2005.
6

7
8 
9 Colin M. Thompson
10 Attorney for Defendants
11 Pacific Telecom, Inc., and
12 Micronesian Telecommunications Corporation
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28